



# LENA C. TAYLOR

Wisconsin State Senator • 4th District

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## Testimony of Senator Lena C. Taylor

Senate Bill 381: Domestic Violence Firearm Surrender Act

Committee on the Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

February 4, 2009

Honorable Members of the Committee:

Thanks you for the opportunity to speak with you about the importance of Senate Bill 381, which will better align Wisconsin law with federal regulations in regard to the possession of firearm for convicted criminals. Succinctly, the bill will create a standard procedure for retaining the firearm of a domestic violence abuser and create greater transparency in its process.

According to a John Hopkins University study, assaults involving the use of a firearm are twelve times more likely to result in a victim's death versus those that do not entail firearms. In 2000 fifty percent of female homicidal victims were murdered by an abuser's firearm. Such an occurrence, however, is not a recent issue, since 1976 to 1996 nearly 65 percent of female and male victims of domestic violence homicides were a result of firearms abuse. Furthermore, states that have passed laws similar to SB 381, supplementing the federal law, have experienced a seven percent drop in spousal homicides.

Federal laws related to SB 381, the Violence Against Women Act of 1994 and the 1997 Omnibus Consolidated Appropriations Act, while currently imposed federally are unable to be enforced here in Wisconsin, as current state law neither requires anyone who is deemed a harm to or danger to public safety to surrender his or her firearm nor does it permit state law enforcement to obtain the firearm. Currently, only 12 counties in the state of Wisconsin collect guns from offenders, and each offer different procedures, SB 381 would offer the defendant two options in regard to surrendering his or her weapon: to either law enforcement or a third party. Once a decision is made to whom the firearm will be surrendered to, the respondent has 48 hours to do so or an arrest warrant will be issued for the respondent. The firearm will, conversely, be returned to the respondent once either the injunction issued has been vacated or has expired or has not been renewed.

To aid in the process's transparency, the respondent will be required in writing to surrender his or her firearm. However, if one is working in law enforcement at the time of the ruling, the court does have the capability to decide what actions should be taken. This is designed to prevent the firing of the respondent that had previously resulted in the initial passage of SB 381's federal counterparts.

Additionally, two simple amendments have been submitted to further simplify the process outlined in SB 381. The first amendment allows the court to dismiss a request for a hearing on surrendering firearms, if the petitioner testifies the offender does not posses firearms and the court is satisfied that the statement is true. The second amendment to this Bill makes it mandatory for offenders to attend the firearms surrender hearing.

By passing SB 381, Wisconsin will join nine other states, in leading the way in defending our society from potentially fatal domestic violence. I urge you, the committee, to pass Senate Bill 381 in order to better protect victims from potentially life threatening domestic violence that through the passage of SB 381 will be greatly deterred.

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Committee on Judiciary, Corrections, Insurance,  
Campaign Finance Reform, and Housing (Chair)  
Committee on Justice Reinvestment  
Initiative Oversight (Chair)

Joint Committee on Finance  
Joint Committee for Review of Criminal Penalties (Co-Chair)  
Committee on Strengthening Wisconsin Families (Co-Chair)  
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# Testimony



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**To:** Members of the Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

**From:** Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence

**Date:** Thursday, February 4, 2010.

**Re:** SB 381- The Domestic Violence Homicide Prevention Procedure Act

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Chairperson Parisi and Members of the Committee, thank you for the opportunity to provide testimony on SB 381--The Domestic Violence Homicide Prevention Procedure Act. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV is a statewide, non-profit, membership organization of battered women, formerly battered women, domestic abuse programs, and individuals committed to ending domestic violence. This legislation creates a simple, uniform procedure that ensures that abusers with active restraining orders surrender their weapons, as required under current law. WCADV fully supports this bill.

A gun is the most commonly used weapon in domestic violence homicide in Wisconsin and throughout the United States. In response to the heightened risk that guns pose to domestic violence victims, both federal and Wisconsin law prohibit the possession of firearm while a person is subject to an active restraining order. However, abusers with civil restraining orders are not held accountable and retain possession of their guns even when barred under state law.

In 2004, a Polk County resident, Mikayla Tester, died after being shot by her father, John Tester, who then killed himself. Mikayla was only five years old. Mikayla's mother had long been afraid for her and Mikayla's safety. She related numerous occasions when John threatened her life. She had two different protection orders during their marriage, and in court documents she had written, "I worry about our daughter if she happens to be in the wrong place at the wrong time when he goes into a rage". John had been arrested three times, twice for violating the order of protection and once for interfering with a 911 call. At the time of the homicide, he had an order of protection against him stating he was not to possess a firearm.

**Under an existing law, individuals subject to restraining orders must surrender their firearms.**

Wisconsin was one of the first states to implement legislation to require domestic abusers to surrender their firearms. Currently, under Wisconsin law, individuals who have an active domestic abuse, child abuse or, in some cases, a harassment restraining order issued against them may not possess firearms.

and must surrender firearms in their possession to the sheriff's department or a court approved third party. This provision, passed about 15 years ago, makes sense.

- A Massachusetts study found that almost two-thirds of guns used by men who shot their partners were illegal because the killer had a prior abuse conviction or a protective order was in effect at the time of the killing.
- A study in North Carolina found that over one-third of respondents to domestic abuse restraining orders had access to a firearm, and over a quarter of those had used firearms against the victim in the previous 12 months.
- Researchers found that in North Carolina in almost 50% of the cases victims of intimate partner homicide had tried legal interventions before the murder, such as a restraining order or arrest.

**Currently, offenders are not being required to actually surrender their guns.**

In many counties, procedures do not exist to enforce firearms surrender requirements, leaving abusers to the honor system and exposing victims to potentially fatal danger. The Governor's Council on Domestic Abuse—Firearms Subcommittee, an interdisciplinary group of law enforcement officers, judicial officials, victim advocates and other professionals, surveyed counties regarding enforcement of the surrender law. The subcommittee found that only 12 counties in Wisconsin have policies in place to actively ensure that abusers who are required to surrender their firearms do so. The subcommittee also heard from judges who said they did not believe they have the legal authority to directly enforce their surrender orders. In addition, the subcommittee found that the current practice of turning guns over to a third party, instead of the sheriff, is problematic. In many cases, the third party is not aware of their responsibilities under the law and is not informed that he or she should not return the weapons without a court order. In other cases, the courts approve transfer to third parties who themselves are barred from possessing guns.

**SB 381 provides for the implementation of model procedures to ensure that perpetrators are held accountable and victims are protected.**

SB 381 will create a procedure to confirm that the abuser has surrendered firearms in accordance with current law. The procedures were developed by the Governor's Council on Domestic Abuse—Firearms Subcommittee. The subcommittee, which was made up of a variety of stakeholders, was mindful of administrative and practical concerns and looked to best practices from other jurisdictions that have similar surrender requirements. Under the model procedures, if the firearms are not surrendered to the sheriff after the restraining order has issued, the abuser will be required to court so that surrender can be arranged. Under SB 381, the respondent may still surrender the weapons to a third party. The bill simply requires that the third party also appear in court so that the judge can inform that individual of his or her responsibilities as a third party and verify that the third party is not legally prohibited from possessing guns.

**SB 381 does not change current firearm restrictions.**

SB 381 will not affect the rights of anyone who is currently legally allowed to possess a gun. This legislation only creates procedures to make sure that Wisconsin's current surrender law actually does what it is supposed to do—protect victims and prevent domestic violence killings.

Thank you for the opportunity to provide testimony on SB 381-The Domestic Violence Homicide Prevention Procedure Act. I urge you to pass this legislation.



# Supreme Court of Wisconsin

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A. John Voelker  
Director of State Courts

Testimony  
of  
Nancy M. Rottier  
on behalf of the  
Director of State Courts

Senate Bill 381  
Relating to Firearm Prohibition Notice and Firearm Surrender

Senate Committee on Judiciary, Corrections, Insurance,  
Campaign Finance Reform and Housing  
February 4, 2010

Senator Taylor and members of the Committee, my name is Nancy Rottier. I am the Legislative Liaison for the Director of State Courts. The Legislative Committee of the Judicial Conference has recently discussed Senate Bill 381. In addition, the Committee of Chief Judges has followed this issue closely for the past year. Although these committees understand and support the goals of SB 381, they have some concerns about its potential impact on the workload of the circuit courts.

The court system made its concerns about SB 381 known to the Joint Review Committee on Criminal Penalties in January. I have attached the memo that was submitted to that committee. As the memo notes in its concluding paragraph, we continue to support the concept of conducting pilot projects in counties of different sizes before enacting legislation that mandates procedures for all counties. I hope this committee will take these concerns into account as it deliberates on SB 381.

I would be happy to answer any questions. Thank you.



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A. John Voelker  
Director of State Courts

TO: Joint Review Committee on Criminal Penalties

FROM: John Voelker, Director of State Courts

RE: SB 381/AB 559 Relating to Firearm Prohibition Notice and Firearm Surrender

DATE: January 6, 2010

I regret I will be unable to testify in person before the Joint Review Committee on Criminal Penalties today on SB 381/AB 559. Please accept these written comments about the bills.

I have concerns about SB 381/AB 559. These issues have been discussed by the Committee of Chief Judges in the past year. We support the goal of improving petitioner safety by clarifying and improving firearm surrender procedures. SB 381/AB 559, however, create logistical and workload issues for the circuit courts, all of which add to both state and county costs of running the courts. Among the issues are the following:

### **Timeline of Firearms Surrender Hearing**

If the court believes the respondent possesses a firearm, these bills require the court to hold a firearms surrender hearing within 7 days of the injunction hearing. This timeline is even shorter than the hearing requirement timeline between the issuance of a temporary restraining order and an injunction hearing, which is 14 days. A previous version of Wis. Stat. § 813.12, the domestic abuse restraining order statute, required the injunction hearing to be within 7 days of the temporary restraining order issuance. That short timeline caused many logistical issues for the court, which were alleviated when the statute was amended and the timeline expanded to 14 days by 2007 Wisconsin Act 124. With these firearms bills, the same logistical issues are resurrected.

### **Scheduling Issues for Additional Hearing**

Because of the 7-day timeline for the additional firearms hearing, the court is almost required to permanently devote blocks of time, in advance, each week, for these hearings. The bills also allow for the hearing to be dismissed within the 7 days. For large counties where there is a high volume of injunctions and multiple judges, devoting time blocks each week may not be an issue. But in counties with one or two judges, scheduling weekly blocks of time for hearings that may never happen could result in considerable wasted time for the court. And, again, because of the 7-day timeline, it is unlikely other hearings could be scheduled within such a short period to fill and productively use this block of time, thus resulting in increased court inefficiency.

### **Additional Notice/Deficient Notice**

As an alternative to scheduling the firearms hearing in advance, the bills allow the court to schedule the firearms hearing at the time the injunction hearing is held. This may alleviate problems with advance scheduling, but it creates workload issues for the clerk and notice issues for the respondent. If the court schedules the firearms hearing at the time the injunction hearing is held, clerks will be required to prepare and mail notice of the hearing to the respondent. Because of the 7-day timeline, this notice must be prepared and mailed immediately after the injunction hearing or it has no chance of reaching the respondent in time. The need for such immediacy adds significant workload for the clerk, who is typically given more time to prepare and send out court notices.

Additionally, the 7-day timeline is so short that notice may not reach the respondent, particularly when the respondent may not have a reliable address because of being displaced as a result of the temporary restraining order. The clerk would not receive information from the post office that the notice was undeliverable before the 7 days expired. If the respondent did not receive notice and did not appear at the hearing, then a warrant would be issued. This would result in unnecessary additional work for the court, the clerk, and the sheriff, and could potentially result in respondents being jailed without notice that they were required to appear before the court.

### **Additional Costs for the Court System**

It is difficult to quantify the additional costs that will be borne by the court system because there is no reliable statewide data on the number of injunction cases that involve firearms surrender. I have attached a copy of the Civil Disposition Summary for calendar year 2008 to give you an idea of the number of TRO/injunction cases handled every year by the court system. In 2008 there were over 14,000 TRO/injunction cases disposed of.

One example may provide some guidance. Recently, Winnebago County applied to the Office of Justice Assistance for a grant to establish a pilot program to verify the surrendering of firearms in TRO/injunction cases. As part of their grant application, they submitted a concept paper that indicated they had 327 cases in which TROs were requested and granted annually. Of those cases, 88 cases (about 27%) involved injunctions with firearms surrender.

### **The Problem of Incriminating Statements**

Another issue has been raised involving a non-fiscal policy matter, and we believe this committee may want to further explore it. As injunctions are civil proceedings, there is concern about authorizing a judge to question a respondent about firearms possession when the answers might be potentially incriminating. These bills require respondents to complete a firearms possession form indicating whether they own or possess firearms. If respondents have been convicted of a crime that disallows them from owning or possessing a firearm, or if respondents are under any other court order not to possess a firearm, being required to disclose whether they possess a firearm forces them to incriminate themselves. This sets up the situation where in order to comply with the court's order in a civil proceeding the respondent must incriminate themselves. The judges who have reviewed these bills find that very troubling.

The Committee of Chief Judges share the concerns about the issue of firearms surrender in restraining orders and petitioner safety, but have previously suggested any change in procedures be tried out on a pilot basis in counties of different sizes. A pilot project would allow us to see whether the court's logistical and workload concerns were outweighed by better and safer outcomes, and to have the chance to identify alternative solutions to the issue if necessary. We continue to support the pilot project concept.

Attachment

JV:NMR